IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Company Petition No.10 of 2007.
Date of decision: 10.10.2007

In the matter of Scheme of amalgamation
of Indoco Healthcare Ltd. …**Transferor Company**

Versus

Indoco Remedies Ltd. …**Transferee Company**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.Suneet Goel, Advocate.**

For the Official Liquidator: **Mr.Sanjeev Kuthiala, Advocate.**

For the Union of India: **Mr.Sandeep Sharma, Assistant Solicitor General of India**

Dev Darshan Sud,J.

This petition has been filed by the Indoco Healthcare Limited under Sections 391, 392, 393 and 394 of the Companies Act, 1956, (hereinafter referred to as the "Act"), with a prayer for amalgamation of the transferor-Company with that of Indoco Remedies Limited.

The petitioner transferor-Company Indoco Healthcare Limited is incorporated under the Companies Act, 1956 has its Registered Office at village Katha, Near Coca Cola Factory, P.O. Baddi, Tehsil Nalagarh, District Solan, H.P. The transferee-Company has its

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

Registered Office at Indoco House, 166, C.S.T.Road, Santacruz (East), Mumbai-400098.

Prior to the filing of the present petition, in Company Petition No.9 of 2006, vide order dated 31.8.2007, the meeting of the equity share-holders had been dispensed with as their consent to the scheme of amalgamation has been placed on record. Similarly, the secured creditors had also given their unqualified assent to the amalgamation. The unsecured creditors had also consented to the arrangement. The following order was passed by this Court:-

> *"I am satisfied from the material on record that the prayer of the Transferee-Company requires to be granted. It is accordingly directed that:-*
>
> *(a) The meeting of the equity shareholders of the Petitioner Transferor-Company to consider and approve the Scheme of Amalgamation is dispensed with.*
>
> ***(b)*** *The meeting of the unsecured creditors is also dispensed with considering that there is consent of the merger on behalf of majority of the unsecured creditors to the Scheme. It is directed that a separate fund be created for those of the unsecured creditors who have not given their consent on the record or in the alternative all of them be paid*

before actual permission of the Court is granted for merger. The course of action to be followed by the Company in this behalf will be reflected in subsequent applications which will be filed.

(c) *As a consequence of the two directions being issued, it is also directed that there will be no need to issue publication of notices in the newspapers etc.*

(d) *Permission is accorded to the Transferee-Company to move for sanctioning of the Scheme of amalgamation of Indoco Healthcare Limited with Indoco Remedies Limited within statutory period.*

This petition is disposed of accordingly".

Notices under Section 394(A) of the Act were ordered to be served on the Official Liquidator and the Regional Director and notices in terms of Rule 80 of the Company (Court) Rules, 1959 were ordered to be published in "Hindustan Times, Dainik Bhaskar, Chandigarh Edition and the Official Gazette" which have since been published.

In the reply, which has been filed by the Regional Director, the amalgamation has not been opposed. A prayer has been made in the following terms:-

"4.1 *It is submitted that the Petitioner Company may be asked to*

> *furnish an undertaking that they shall comply with the accounting treatment as prescribed under Accounting Standard 14 i.e. `Accounting for Amalgamation' issued by the Institute of Chartered Accountants of India".*

The Official Liquidator, has also not opposed the amalgamation and submitted that the affairs of the Company are not being conducted in a manner which is prejudicial to the creditors, shareholders etc. nor will the scheme affect the shareholders and creditors adversely.

This Court has already dispensed with the meeting of the shareholders who approved amalgamation of the Company and in view of the affidavits which have been filed by the Official Liquidator as also the Director, and having regard to the averments made in the petition duly supported by the affidavit of the authorized signatory and the material placed on the record as also the fact that no one has objected to the scheme of amalgamation being sanctioned, I am satisfied that the scheme does not cause any prejudice to any of the shareholders, employees or the General Public. No legal impediment has been brought to my notice which would be prejudicial to the shareholders, creditors or the General Public or that the amalgamation is against the financial interests of the Transferor and the Transferee Company.

Accordingly, the Scheme of amalgamation, Annexure-G to the petition, is hereby sanctioned in its entirety under Sections 391 to 394 of the Act, 1956 as far as the transferor Company is concerned. This order will be subject to any order which would be passed by the Company Court dealing with the application filed by the transferee Company. In case such amalgamation is allowed, Scheme will be deemed to have come into force from their appointed date, the transferor Company having amalgamated to the transferee Company shall stand dissolved without the process of winding up.

A further direction is issued that the petitioner-Company shall comply with the requirement of maintaining accounts as asked for by the Regional Director and furnish the undertaking as asked for. The condition of creating a separate fund for those of the unsecured creditors who have not given their consent to the amalgamation and where such fund was ordered on 31.8.2007 shall be duly complied with.

With these directions the petition is disposed of.

It is directed that the fee of Rs.10,000/- shall be paid as counsel fee appearing for the Official Liquidator.

October 10, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**